



# California Fair Political Practices Commission

September 29, 1988

Greg Luke  
Luke-Dudek  
Civil Engineers, Inc.  
605 Third Street  
Encinitas, Calif. 92024

Re: Your Request for Advice  
Our File No. I-88-307

Dear Mr. Luke:

You have written requesting our advice as to potential conflict of interest issues which might arise in your capacity as a city councilmember under the provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your letter states only a general question; you have not requested advice concerning a specific pending decision. Therefore, we consider your letter to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).<sup>2/</sup>

## QUESTION

Does your involvement in a contract with the County of San Diego to study the possibility of expanding the San Marcos

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c) (3).)

landfill create any potential disqualification requirements in your role as a councilmember for the City of Encinitas? The City of Encinitas is suing the City of San Marcos over the issue of a trash burning plant that is proposed to be constructed on the landfill site.

#### CONCLUSION

Under the Act, your involvement in the contract with the County of San Diego will not require your disqualification from City of Encinitas decisions unless it is reasonably foreseeable that a city decision will have a material financial effect on your company or on a source of income to you through your company.<sup>3/</sup>

#### FACTS

You are a member of the Encinitas City Council. You are also a 35% owner of the engineering firm of Luke-Dudek, Civil Engineers, Inc. ("Luke-Dudek"). The firm specializes in public works projects. One of its areas of expertise is solid waste landfill studies.

The County of San Diego establishes an "annual list"; that is a list of qualified engineers that they sequentially contract with to work on new projects as they arise. About eight months ago Luke-Dudek was selected as an engineering firm qualified to work on landfill projects with the County of San Diego.

Shortly after the establishment of the annual list of landfill engineers, Luke-Dudek negotiated a contract with the county to do some work at the San Marcos Landfill, a county-operated facility, located in the City of San Marcos. Concurrent with these events happening at Luke-Dudek, other events were evolving at the Encinitas City Council.

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<sup>3/</sup> Because a contract with a governmental entity is involved, we note that Government Code Section 1090, et seq., deals with conflicts of interest involving government contracts. The Commission does not interpret Government Code Section 1090, et seq. and expresses no opinion on its applicability to your circumstances. You should consult with your city attorney or others on this subject.

Approximately one year ago, the City of Encinitas became involved in a dispute with the City of San Marcos. San Marcos, in association with a consortium of private firms and in cooperation with the County of San Diego, proposed to construct a trash burning plan at the San Marcos landfill.

Encinitas has contended that the environmental impact report ("EIR") for this project was inadequate, particularly as it relates to the air quality impacts. A lawsuit was filed by Encinitas to stop the project until the EIR was adequately prepared. That lawsuit continues, and you expect it will continue for many months.

The San Marcos landfill site is located outside the city limits of Encinitas. As such, you have no direct role in decisions affecting the landfill site. Your only governmental role stems from the decisions of the City Council of Encinitas to pursue the litigation against the trash burning plant proposal.

#### ANALYSIS

The Act prohibits public officials from making, participating in making, or using their official position to influence a governmental decision in which they have a financial interest. (Section 87100.) An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect on the official, a member of the official's immediate family, or on any one of several types of economic interests. The effect on the official or his economic interest must be distinguishable from the effect on the public generally. (Section 87103.)

Among the economic interests enumerated in Section 87103 is any business entity in which the official has an investment worth \$1,000 or more, or in which the official is an officer, partner or employee, or which is a source of income to the official of \$250 or more during the preceding 12-month period. Section 87103(a), (d) and (c) respectively.) Clearly, Luke-Dudek is an economic interest to you under each of these provisions.

In addition, as a 10-percent or more owner of Luke-Dudek, sources of income to Luke-Dudek are sources of income to you on a pro-rata basis. (Section 82030(a).) Since you own 35% of Luke-Dudek, any source of income to Luke-Dudek will be a source of income to you, with 35% of the source's gross payments to Luke-Dudek attributed to you. Hence, a client of Luke-Dudek who pays \$715 in fees to Luke-Dudek will be considered a source of income to you of \$250.

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Thus, under Section 87103(c), you would be required to disqualify yourself if a decision would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on a client of Luke-Dudek whose gross payments to the company are \$715 or more in the preceding 12 months.

It is conceivable that decisions by the City of Encinitas relating to the litigation could have some impact on the amount of contract work which your firm would perform for the County of San Diego. Whether or not that possibility rises to the level of being reasonably foreseeable is the issue. We do not have sufficient facts to make a determination at this time. I enclose a copy of the Commission's leading opinion on the subject of foreseeability, In re Thorner (1975) 1 FPPC Ops. 198, for your review.

If you determine that it is reasonably foreseeable that any decision by the Encinitas City Council will have a reasonably foreseeable financial effect on Luke-Dudek, then you must determine whether or not the effect will be considered material. I enclose a copy of Regulation 18702.2 which provides guidelines on that subject. Given the facts which you have provided to us, it appears likely that Luke-Dudek is a small, closely held business entity. Thus, under subdivision (g), an effect of \$10,000 or more on Luke-Dudek's annualized gross revenues would be deemed material.

Therefore, if it were reasonably foreseeable that a particular result in the litigation would result in Luke-Dudek obtaining, or losing, at least \$10,000 in additional work, disqualification would be required as to any city council decision which would affect the outcome of the litigation.

Again, we have insufficient facts upon which to base a definitive conclusion in this regard. You should review this letter and the enclosures to determine whether you should seek further advice in the future regarding specific decisions.

Lastly, you should determine whether any city council decisions will have a reasonably foreseeable material financial effect on any sources of income to you through your ownership interest in Luke-Dudek. If so, and if the decision's effect on the source of income will be distinguishable from the effect on the public generally, disqualification will be required. Again, we have insufficient facts to allow us to provide more than this general guidance.

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I trust that this letter adequately responds to your request. Should you have questions regarding this letter, you may contact this office at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

A handwritten signature in cursive script, reading "Kathryn E. Donovan".

By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:ld

Enclosures

LUKE-DUDEK  
CIVIL ENGINEERS, INC.

605 Third Street

Encinitas, CA 92024

(619) 942-5147

Fax No. (619) 632-0164

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August 1, 1988

California Fair Political Practices Commission  
428 J Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804-0807

Gentlemen:

I am a member of the Encinitas City Council. I am also a 35% owner of the engineering firm of Luke-Dudek, Civil Engineers, Inc. The firm specializes in public works projects. One of our areas of expertise is solid waste landfill studies.

The County establishes an "annual list"; that is a list of qualified engineers that they sequentially contract with to work on new projects as they arise. About eight months ago Luke-Dudek was selected as an engineering firm qualified to work on landfill projects with the County of San Diego.

Shortly after the establishment of the annual list of landfill engineers, Luke-Dudek negotiated a contract with the County to do some work at the San Marcos Landfill, a County-operated facility, located in the City of San Marcos.

Concurrent with these events happening at Luke-Dudek, other events were evolving at the Encinitas City Council. It is the inter-relationship of these events that required your assistance.

Approximately 1 year ago the City of Encinitas became involved in a dispute with the City of San Marcos. San Marcos, in association with a consortium of private firms, in cooperation with the County of San Diego proposed to construct a trash burning plant at the San Marcos landfill. Encinitas has contended that the Environmental Impact report for this project was inadequate, particularly as it relates to the air quality impacts. A lawsuit was filed by Encinitas to stop the project until the EIR was adequately prepared. That lawsuit continues, and I expect it will continue for many months.

So, in summary, I am a part owner in a firm that has a contract with the County of San Diego to study the possibility of expanding the San Marcos landfill. At the same time, I am a councilmember for Encinitas who is suing the City of San Marcos

over the issue of a trash burning plant that is proposed to be constructed on the landfill site. The landfill is located outside the city limits and, as such, I have no authority to vote on either the landfill expansion or the trash burning plant.

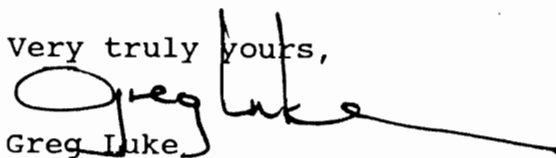
I have thought about how the actions of the Encinitas City Council regarding the trash burning lawsuit could possibly affect Luke-Dudek's financial posture. I cannot establish any reasonable link. In the abstract, one might argue that if the trash burning plant is stopped, the San Marcos landfill might need to be expanded sooner. It might be argued that Luke-Dudek would have the "inside track" at being chosen as the design engineer. The flaw in this logic is that the County does not have any governmental approvals or permits to expand the landfill. The Board of Supervisors have given no indication they intend to further pursue landfill expansion. The design engineer would be selected by open competition. The chances that Luke-Dudek would someday be chosen by the County to design the landfill expansion are remote.

I have talked to our City Attorney (Mr. Roger Krauel (619) 231-3603) and our special council for the trash burning lawsuit (Mr. Dwight Worden (619) 755-6604) about a potential conflict of interest. Neither attorney could identify a problem. However, I would like your advice on the matter.

Please review this matter for me and render an opinion.

Very truly yours,

Greg Luke

A handwritten signature in black ink, appearing to read "Greg Luke", with a long horizontal flourish extending to the right.

**LUKE-DUDEK**  
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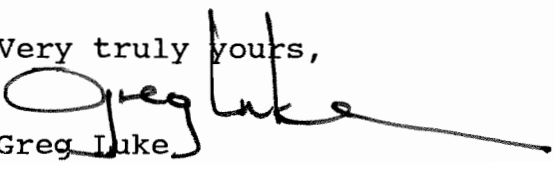
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